

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES DANIEL ALEXANDER,
Plaintiff,

v.

JERRY BROWN, former Governor of California, as an individual; KATHLEEN ALLISON, Secretary of the California Department of Corrections and Rehabilitations (CDCR) as an individual; JEFFREY A BEARD, Secretary of CDCR, as an individual; SCOTT KERNAN, Secretary of CDCR, as an individual; RALPH DIAZ, Secretary of CDCR, as an individual; JENNIFER SHAFFER, Executive Director of the California Board Of Parole Hearings (BPH), as an individual; KEVIN STRIPLING, BPH Scheduler, as an individual; M.D. STAINER, Director of Adult Division for CDCR, as an individual; M. VOONG, Chief Appeals Coordinator, as an individual; G. MURPHY, Appeals Coordinator (Headquarters), as an individual; RAYMOND MADDEN, Warden (Centinela State Prison), as an individual; J. GASTELO, Warden (California Men's Colony State Prison), as an individual; P. DENNY, Associate Warden (California Men's Colony State Prison), as an individual; R. GIBSON, Correctional Counselor II, at California Men's Colony State Prison (CMC), as an individual; M. DENBY, Correctional Counselor I, California Men's Colony State Prison (CMC), as an individual; L. CHAUNCEY, local BPH official at CMC, as an individual; T. N ELSON, local BPH

CASE No: 8:23cv274-JFW-SHK

CIVIL RIGHTS COMPLAINT, 42 USC § 1983

1. GOVERNMENTAL INTERFERENCE WITH FREE SPEECH
2. GOVERNMENTAL INTERFERENCE WITH RIGHT TO BEAR ARMS
3. DUE PROCESS
4. EQUAL PROTECTION
5. CRUEL AND UNUSUAL PUNISHMENT

DEMAND FOR JURY TRIAL

1 official at CMC, as an individual; D.
2 ROBINSON, local BPH official at CMC,
3 as an individual; D. DON, local BPH
4 official at CMC, as an individual; C.
5 AZEVEDO, local BPH official at CMC, as
6 an individual; L. MARTINEZ, local BPH
7 official at CMC, as an individual; S.
8 HOPKINS, local BPH official at CMC, as
9 an individual; and DOES 1-50, inclusive,

Defendants.

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23 James Alexander
24 2817 S. Fairview Street, Unit H
25 Santa Ana, CA 92704
26 (714) 868-9702
27 thereal2021jamesalexander@gmail.com

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Plaintiff, in pro per

JURISDICTION AND VENUE

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2 1. This is civil rights action for compensatory, injunctive, and declaratory relief,
3 and damages (including, but not limited to special, exemplary, and punitive damages),
4 pursuant to 42 U.S.C. § 1983, and based upon violations of Plaintiffs' rights that are
5 protected under the First, Second, Eighth, and Fourteenth Amendments of the United States
6 Constitution.

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8 2. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and 1343, based on 42 U.S.C.
9 §1983, and questions of federal constitutional law. Jurisdiction also exists under the
10 Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202. Supplemental jurisdiction over
11 Plaintiffs' state law claims is pursuant to 28 U.S.C. § 1367.

12
13 3. Venue is proper in the United States District Court, Central District of
14 California, in that the events and conduct complained of herein all occurred within the
15 jurisdiction of Central District of California.

16 4. The two-year statute of limitations to bring this civil rights action before the
17 Court was tolled under California Code of Civil Procedure § 352.1, where the plaintiff was
18 incarcerated throughout the duration of time in which the civil rights violations occurred and
19 was, ultimately, released from state custody onto parole on February 17, 2021.
20

PARTIES

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22 5. Plaintiff James Daniel Alexander (hereinafter "Plaintiff") is an American
23 citizen that is currently residing within the State of California, County of Orange.

24 6. Defendant Jerry Brown was the Governor of the State of California, and was
25 the top governmental official of the California Department of Corrections and
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1 Rehabilitations (CDCR), and the California Board of Parole Hearings (BPH) within and
2 between the years of 2010 and 2018.

3 7. Defendant Kathleen Allison was the Secretary of the CDCR within and
4 between the year of 2020.

5 8. Defendant Jeffery A. Beard was the Secretary of the CDCR within and
6 between the years of 2012 and 2016.

7 9. Defendant Scott Kernan was the Secretary of the CDCR within and between
8 the years of 2015 and 2016.

9 10. Defendant Ralph Diaz was the Secretary of the CDCR within and between the
10 years of 2018 and 2019.

11 11. Defendant M.D. Stainer was the Director of Adult Divisions for the CDCR
12 within and between the years of 2016 and 2018.

13 12. Defendant Raymond Madden was the Warden at Centinela State Prison (CSP)
14 within and between the years of 2016 and 2017.

15 13. Defendant J. Gastelo was the Warden at California Men's Colony State Prison
16 (CMCSP) within and between the years of 2017 and 2018.

17 14. Defendant P. Denny was an Associate Warden at CMC within and between the
18 years of 2017 and 2018.

19 15. Defendant M. Voong was the Chief, Appeals Coordinator for the CDCR
20 within and between the years of 2017 and 2020.

21 16. Defendant G. Murphy was an Appeals Coordinator for the CDCR within and
22 between the years of 2017 and 2018.

1 17. Defendant R. Gibson was a Correctional Counselor II (CC II) at CMC within
2 and between the years of 2017 and 2020.

3 18. Defendant M. Denby was a Correctional Counselor I (CCI) at CMC within and
4 between the years of 2017 and 2020.

5 19. Defendant Jennifer Shaffer was the Executive Director of the BPH within and
6 between the years of 2016 and 2020.

7 20. Defendant Kevin Stripling was the Chief Scheduler for the BPH within and
8 between the years of 2018 and 2020.

9 21. Defendant L. Chauncey was a CCII for the BPH at CMC within and between
10 the years of 2018 and 2020.

11 22. Defendant T. Nelson was a BPH official at CMC within and between the years
12 of 2018 and 2020.

13 23. Defendant D. Robinson was a BPH official at CMC within and between the
14 years of 2018 and 2020.

15 24. Defendant D. Don was a BPH official at CMC within and between the years of
16 2018 and 2020.

17 25. Defendant C. Azevedo was a BPH official at CMC within and between the
18 years of 2018 and 2020.

19 26. Defendant L. Martinez was a BPH official at CMC within and between the
20 years of 2018 and 2020.

21 27. Defendant S. Hopkins was a BPH official at CMC within and between the
22 years of 2018 and 2020.

1 28. The true names and capacities of Defendants named herein DOES 1 through
2 50 are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend the Complaint to show the true names and capacities of such DOES
4 when they have been found what their names are to be. Plaintiff is informed and believes,
5 and thereupon alleges, that each of DOES 1 through 50 were responsible in some manner for
6 the occurrences and acts herein alleged, and that Plaintiff's damages and violations of
7 Plaintiff's rights were actually and proximately caused by such DOE defendants.
8

9 29. Plaintiff is informed and believes and thereon alleges that, at all times
10 mentioned herein, Defendants were the agents, servants, representatives, partners and/or
11 employees of co-Defendants, and, by engaging in the actions mentioned below, were, unless
12 otherwise alleged, acting within the course and scope of their authority as such agent,
13 servant, representative, partner, and/or employee, with the permission and consent of co-
14 Defendants.
15

16 30. Any allegations about acts of any corporate or other business, "Defendants"
17 means that the corporation or other business did the alleged acts through its officers,
18 directors, employees, agents, and/or representatives, while acting within the actual or
19 ostensible scope of their authority. This is an action brought by Plaintiff to remedy the
20 damages caused by Defendants' violations of the United States Constitution, federal and
21 California statutory law, which resulted from negligent, unfair, and unlawful acts.
22

23 **STATEMENT OF FACTS**

24 31. On or about January 26, 1996, Plaintiff was sentenced to a thirty-year-to-life
25 sentence under the California Three Strikes Law.
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1 32. Plaintiff received a 30-year-to-life sentence after being convicted for one count
2 of non-violent residential burglary.

3 33. Plaintiff, for purposes of this civil rights complaint, will be designated under
4 the classification of "Non-Violent Third Strike" (NVTs) prisoner.

5 34. On or about November 8, 2016, the California voters passed a ballot initiative
6 called "Proposition 57" (Prop 57), which fundamentally revised the California Three Strikes
7 Law. Relevant to this civil complaint, Prop. 57 mandated that the CDCR and BPH provide
8 early parole consideration (EPC) hearings to all NVTs prisoners.

9 35. For several months preceding the November 8, 2016 election, the official
10 advocates against Prop. 57 proclaimed that the passage of Prop. 57 would mandate EPC
11 hearings for any and all NVTs prisoners.

12 36. On or about June 6, 2016, the California Supreme Court analyzed the language
13 of Prop. 57 and declared that the passage of Prop. 57 would mandate EPC hearings for any
14 and all NVTs prisoners. (*Brown v. Superior Court* (2016) 63 Cal. 4th 335.)

15 37. Immediately subsequent to the passage of Prop. 57, Plaintiff submitted written
16 inquiries to the appropriate prison officials to request information regarding new CDCR and
17 BPH policies which would reflect the will and intent of Prop. 57.

18 38. After several attempts, Plaintiff was unable to receive any confirmation as to
19 specific CDCR or BPH policy changes that would be implemented to reflect the will and
20 intent of Prop. 57.

21 39. On or about January 13, 2017, Defendant Brown released his 2017 California
22 budgetary proposal, as it pertained to the CDCR and BPH. The said budgetary proposal
23 declared that no additional funding would be allocated to provide Non-Violent Third Strike
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1 (NTVS) prisoners with an opportunity for an EPC hearing, regardless of the passage of
2 Prop. 57. The exclusion of NVTs prisoners within the 2017 budgetary proposal reflected
3 the administrative decision to arbitrarily deny NVTs prisoners of their state-created, liberty
4 interest right to an EPC hearing.
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6 40. On or about January 31, 2017, Plaintiff submitted a CDCR administrative
7 appeal (Appeal #1) at CSP to challenge Defendant Brown's decision to arbitrarily deny
8 NVTs prisoners of their state-created, liberty interest right to an EPC hearing. Essentially,
9 Appeal #1 addressed the administrative decision to arbitrarily deny NVTs prisoners of their
10 state-created, liberty interest right to an EPC hearing.
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12 41. On or about February 1, 2017, Appeal #1 was capriciously rejected without a
13 decision being rendered on the merits of the appeal. Appeal #1 was summarily rejected by
14 Defendant Gibson.
15

16 42. On or about February 6, 2017, Plaintiff resubmitted Appeal #1 and explain that
17 the appeal should be reconsidered for review, where Plaintiff was being arbitrarily denied an
18 EPC hearing, based upon Defendant Brown's 2017 budgetary proposal.
19

20 43. On or about February 7, 2017, Defendant Gibson capriciously rejected Appeal
21 #1 for a second time without a decision being rendered on the merits of the appeal.
22

23 44. On or about February 10, 2017, Plaintiff resubmitted Appeal #1 for a third
24 time, after following the vague instructions of Defendant Gibson which accompanied the
25 second rejection of Appeal #1.
26

27 45. On or about February 14, 2017, Defendant Gibson capriciously cancelled
28 Appeal #1, which prevented Plaintiff from resubmitting Appeal #1 for a fourth time.

1 Defendant Gibson claimed that Plaintiff failed to satisfactorily revise and correct the alleged
2 deficiencies of Appeal #1.

3 46. Plaintiff, shortly thereafter February 14, 2017, mailed a tort claim form to the
4 state Board of Control for review of Appeal #1. Plaintiff did not receive a response to the
5 tort claim form.
6

7 47. On or about February 20, 2017, Plaintiff submitted a CDCR administrative
8 appeal (Appeal #2) to challenge the cancellation of Appeal #1.

9 48. On or about April 3, 2017, Appeal #2 was arbitrarily rejected by Defendant
10 Madden, who supported the decision to cancel Appeal #1.

11 49. Plaintiff, shortly thereafter April 3, 2017, mailed a tort claim form to the state
12 Board of Control for review of Appeal #2. Plaintiff did not receive a response to the tort
13 claim form.
14

15 50. On or about April 3, 2017, Plaintiff submitted a CDCR administrative appeal
16 (Appeal #3) which addressed the exclusion of NVTs prisoners from benefiting from newly
17 implemented EPC policies as a result of Prop. 57.

18 51. On or about April 5, 2017, Appeal #3 was egregiously cancelled by Defendant
19 Gibson. Defendant Gibson claimed that Appeal #3 addressed the same issues raised in
20 Appeal #1 and further review would not be permitted. .
21

22 52. Plaintiff, shortly thereafter April 5, 2017, mailed a tort claim form to the state
23 Board of Control for review of Appeal #3. Plaintiff did not receive a response to the tort
24 claim form.
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26 53. On or about April 18, 2017, Plaintiff submitted a CDCR administrative appeal
27 (Appeal #4) to challenge the arbitrary cancellation of Appeal #3.
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1 54. On or about May 17, 2017, Plaintiff submitted a CDCR administrative appeal
2 (Appeal #5). Appeal #5 addressed: (1) the erroneous calculation of Good Conduct Credits
3 (GCC), as determined under new CDCR policies that were enacted as a result of Prop. 57;
4 and (2) the exclusion of NVTs prisoners from newly proposed EPC policies that were to
5 begin being implemented on July 1, 2017 as a result of Prop. 57.
6

7 55. On or about May 31, 2017, Appeal #4 was arbitrarily denied by Defendant
8 Madden, who supported the decision to cancel Appeal #3.

9 56. Plaintiff, shortly thereafter May 31, 2017, mailed a tort claim form to the state
10 Board of Control for review of Appeal #4. Plaintiff did not receive a response to the tort
11 claim form.
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13 57. On or about June 5, 2017, Defendant Denny arbitrarily denied Appeal #5,
14 claiming that there was no miscalculation of Plaintiff's GCC, and that Plaintiff's exclusion
15 from newly proposed EPC hearing policies was appropriate.

16 58. On or about June 12, 2017, Plaintiff submitted Appeal #5 to the CMCS
17 Appeals Coordinators Office for the next level of review.

18 59. On or about June 29, 2017, Appeal #5 was denied by Defendant Gastelo for
19 the same reasons that were utilized by Defendant Denny.
20

21 60. On or about July 1, 2017, the CDCR and BPH began the implementation of
22 new policies which provided EPC hearings to Non-Violent Second Strike (NVSS) prisoners,
23 but the new policies arbitrarily excluded NVTs prisoners from receiving their state-created,
24 liberty interest right to an EPC hearing.

25 61. On or about July 11, 2017, Plaintiff submitted Appeal #5 to CDCR
26 headquarters for the last level of review.
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1 62. On or about September 28, 2017, Defendant Murphy and Defendant M. Voong
2 arbitrarily denied Appeal #5, claiming that the previous denials at the lower levels of review
3 were appropriate.

4 63. Plaintiff, shortly thereafter September 28, 2017, mailed a tort claim form to the
5 state Board of Control for review of Appeal #5. Plaintiff did not receive a response to the
6 tort claim form.

7 64. On or about October 4, 2017, Plaintiff attempted to submit an inmate appeal to
8 the BPH to challenge the decision to arbitrarily deny him an EPC hearing, alleging that his
9 exclusion was in direct violation of his state-created, liberty interest rights protected under
10 both the state and federal constitutions. Plaintiff's appeal was summarily rejected because it
11 was alleged that the BPH did not accept and process administrative appeals submitted by
12 prisoners.

13 65. On or about September 7, 2018, the California Court of Appeal, Second
14 Appellate District, Division Five, rendered a decision which declared that the CDCR and
15 BPH were arbitrarily excluding NVTs prisoners from benefiting from the EPC hearing
16 policies that were enacted as a result of Prop. 57. (*In re Edwards* (2018) 26 Cal. App. 5th
17 1181.) The Court of Appeal decision also mandated the evaluation of NVTs prisoners for
18 EPC hearing within 60 days from the Court's decision.

19 66. On or about September 19, 2018, Plaintiff submitted an Inmate Request Form
20 (which was the first level of appeal, in accordance with newly implemented CDCR
21 regulations) to the CMCSP Records Office. The said Inmate Request Form (IRF #1)
22 respectfully requested a review of Plaintiff's prison file to confirm that he qualified for
23 immediate EPC under *In re Edwards*.

1 67. On or about September 25, 2018, Defendant Lawea responded to IRF #1 and
2 stated that “Proposition 57 regulations regarding the [NVTs prisoners] have not changed—
3 if any new direction from headquarters is received that will affect your eligibility, you will
4 be notified.
5

6 68. On or about September 24, 2018, Plaintiff submitted another Inmate Request
7 Form (IRF #2) to the CMCSP Case Service Representative. This Inmate Request Form
8 respectfully requested the same review as the request submitted on September 19, 2018,
9 except the request was directed at a prison official who was recommended to Plaintiff by his
10 correctional counselor.
11

12 69. On or about September 26, 2018, Defendant Chauncey responded to IRF #2
13 identical to Defendant Lawea and stated that “Prop. 57 regulations regarding [NVTs
14 prisoners] have not changed—if any new direction from headquarters is received that will
15 affect your eligibility, you will be notified.”
16

17 70. On October 7, 2018, Plaintiff submitted another Inmate Request Form (IRF
18 #3) to the CMCSP C.L.E.G.G. This Inmate Request Form respectfully requested the same
19 review as the request submitted on September 19, 2018 and September 26, 2018, except the
20 request was directed at the prison official (C.L.E.G.G.) who was recommended to Plaintiff
21 by another prison official.
22

23 71. On or about October 9, 2018, Defendant Chauncey responded to IRF #3
24 identical to Defendant Lawea and stated that “Prop. 57 regulations regarding [NVTs
25 prisoners] have not changed—if any new direction from headquarters is received that will
26 affect your eligibility, you will be informed.”
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1 72. On or about October 9, 2018, Plaintiff submitted IRF #3 for the next level of
2 review through the inmate mailing system.

3 73. On or about October 15, 2018, Defendant T. Nelson responded to IRF #3 and
4 stated that "Current Prop 57 regulations regarding [NVTs prisoners] still have not changed.
5 If any new direction from headquarters is received that will affect your eligibility, you will
6 be notified." This response ended the informal process in which to file grievances.

7 74. On and between the dates of October 15, 2018, and October 21, 2019, Plaintiff
8 pursued and submitted several Inmate Request forms to various prison and BPH officials,
9 but Plaintiff received absolutely no response from any of those Inmate Request forms.

10 75. On or about December 1, 2018, Plaintiff received written notification from
11 CDCR that, according to CDCR and BPH policies, Plaintiff was required to receive his EPC
12 hearing no later than one year subsequent to official notification from CDCR.

13 76. On or about February 2, 2019, Plaintiff received official notification from
14 CDCR that he would receive his EPC hearing on November 17, 2019. According to the
15 official notification, Plaintiff was required to receive an EPC hearing no later than February
16 2, 2020.

17 77. On May 2, 2019, Plaintiff submitted another Inmate Request form (IRF #4) to
18 the BPH Records Office in order to inquire as to why there was a delay in scheduling him
19 for an EPC hearing in front of the BPH, and the application of GCC to expedite the
20 scheduling of an EPC hearing.

21 78. On May 14, 2019, Defendant D. Robinson responded to IRF #4 and stated
22 "you will hear something from the Board; Case Records staff is not involved in the part of
23 the process, see attached Notice of ISLNV referral decision for further information. The
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1 attachment provided absolutely no clarity regarding Plaintiff's eligibility for early parole
2 considerations and the application of GCC.

3 79. On May 15, 2018, Plaintiff submitted IRF #4 for the next level of review
4 through the inmate mailing system.

5 80. On or about May 20, 2019, Defendant D. Don responded and stated "Per
6 244.932(a)(2); if your NPED is in the past, you will be scheduled for an initial parole
7 hearing within one year of your referral to Board. You were referred on February 2, 2019.
8 This is not a Records function." This response ended the informal process in which to file
9 grievances.
10

11 81. On or about October 21, 2019, CDCR submitted to the California Secretary of
12 State new regulations that changed the former regulations that excluded NVTs prisoners
13 from receiving EPC hearings. The new regulations included the following relevant changes:
14 (1) the opportunity for NVTs prisoners to earn 33% good conduct credit, which would only
15 be applied prospectively from the date the new regulation would be implemented; and (2)
16 the opportunity for EPC for NVTs prisoners after serving 20 years of their respective prison
17 sentence.
18

19 82. On or about November 13, 2019, Plaintiff was informed that his scheduled
20 EPC hearing set for November 17, 2019 was postponed to an unknown date in the future.

21 83. On or about November 14, 2019, Plaintiff sent several letters to several
22 different departments with the CDCR and BPH to inquire into the unjustifiable
23 postponement of his EPC hearing.
24

25 84. On or about November 18, 2019, Defendant Azevedo responded to one of
26 Plaintiff's November 14, 2019 letters, and responded that "at this time the hearings for that
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1 week have 'all' been postponed. Why and When they will be rescheduled is up to
2 Sacramento. Here @ CMC, we have no control over it. As soon as we get the information
3 you will be notified."

4
5 85. On or about November 26, 2019, the BPH responded to one of Plaintiff's
6 November 14, 2019 letters (response letter dated November 20, 2019), and informed
7 Plaintiff that the BPH had re-scheduled his EPC hearing for December 31, 2020.

8 86. On or about December 8, 2019, Plaintiff submitted an Inmate Request Form
9 (IRF #5) to the local BPH staff at CMCSP. IFR #5 delineated the new BPH policy
10 pertaining the EPC hearings and that the new BPH policy required Plaintiff to be provided
11 with his EPC hearing prior to February 2, 2020.
12

13 87. On or about December 12, 2019, Defendant S. Hopkins responded to IRF #5
14 by stating that "per policy, your initial NLT date should be scheduled 12 months prior to
15 your MEPD date is 11-22-2021, your initial NLT date is 12-31-2020."

16 88. On or about December 12, 2019, Defendant L. Martinez responded to one of
17 Plaintiff's November 14, 2019 letters, and stated that "we do not do the scheduling here at
18 the institution...any scheduling questions need to be sent to Sacramento."
19

20 89. On or about December 31, 2020, Plaintiff received his EPC hearing by the
21 BPH at CMCSP. Plaintiff was tentatively granted parole by the BPH on the same day.

22 90. On or about February 17, 2021, Plaintiff was released from the custody of the
23 CDCR and was placed on parole for a term of one year.

24 91. On or about February 2, 2022, Plaintiff was officially discharged from parole
25 after successfully returning to free society.
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FIRST CAUSE OF ACTION

Governmental Interference With Free Speech

42 U.S.C. §1983 - First Amendment; Article II, §9, California Constitution
(Against Defendants Kathleen Allison, Jeffrey A Beard, Scott Kernan, Ralph Diaz,
M. Voong, G. Murphy, Raymond Madden, J. Gastelo, P. Denny, R. Gibson,
M. Denby, L. Chauncey, and Does 1-50)

92. Plaintiff realleges and incorporates by reference the allegations and facts set forth in the preceding paragraphs as though fully set forth herein.

93. Plaintiff possesses a state-created, liberty interest right to file inmate administrative appeals to challenge actions/inactions of prison/state officials that adversely affect Plaintiff.

94. Plaintiff enjoys the right of free speech protections under the First Amendment of the U.S. Constitution, which is conferred and enforceable against the state of California (and its agents) through the 14th Amendment of the U.S. Constitution.

95. Plaintiff also enjoys the right of free speech protections under Article II, § 9, of the California Constitution.

96. Under CDCR regulations, Plaintiff possesses a freedom of speech right and a state-created, liberty interest right to file administrative inmate appeals to challenge actions/inactions of prison/state officials that adversely affect Plaintiff.

97. Under the California Constitution, Plaintiff possesses a freedom of speech right and a state-created, liberty interest right to file administrative inmate appeals to challenge actions/inactions of prison/state officials that adversely affect Plaintiff.

98. Under the 1st Amendment of the U.S. Constitution, Plaintiff possesses a freedom of speech right and a liberty interest right to file administrative inmate appeals to challenge actions/inactions of prison/state officials that adversely affect Plaintiff.

1 99. Defendants, at all times mentioned herein, prevented Plaintiff from presenting
2 administrative inmate appeal regarding actions/inactions of prison officials (and/or their
3 supervisors) that adversely affected Plaintiff's "health, safety, and welfare."

4
5 100. Defendants, at all times mentioned herein, prevented Plaintiff from presenting
6 administrative inmate appeal regarding "departmental policies, decisions, actions, conditions,
7 or omissions that had a material adverse effect upon his "health, safety, or welfare."

8 101. Defendants, at all times mentioned herein, who served in a supervisory
9 capacity are equally responsible for the violations to Plaintiff's free speech rights and state-
10 created, liberty interest rights, where they knew or should have known that Plaintiff's rights
11 were being violated and did nothing to prevent the violations.

12
13 102. Defendants, at all times mentioned herein, acted under the color of state law in
14 preventing Plaintiff from presenting administrative inmate appeals, and by violating
15 Plaintiff's rights to free speech and his state-created, liberty interest rights.

16 103. Defendants, at all times mentioned herein, did not act reasonably, or failed to
17 act reasonably, and prevented Plaintiff from presenting administrative inmate appeals
18 regarding actions/inactions of prison officials (and/or their supervisors) that adversely
19 affected Plaintiff's health, safety, and welfare."

20
21 104. On or about February 1, 2017 and February 7, 2017, Plaintiff's First
22 Amendment rights were violated by Defendant Gibson, when Plaintiff's administrative
23 appeal was arbitrarily rejected.

24 105. On or about February 14, 2017 and April 5, 2017, Plaintiff's First Amendment
25 rights were violated by Defendant Gibson, when Plaintiff's administrative appeal was
26 capriciously canceled.
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1 106. On or about April 3, 2017 and May 31, 2017, Plaintiff's First Amendment
2 rights were violated by Defendant Madden, when Plaintiff's administrative appeal was
3 arbitrarily rejected.

4 107. On or about June 5, 2017, Plaintiff's First Amendment rights were violated by
5 Defendant Denny, when Plaintiff's administrative appeal was arbitrarily rejected.
6

7 108. On or about June 29, 2017, Plaintiff's First Amendment rights were violated
8 by Defendant Gastelo, when Plaintiff's administrative appeal was arbitrarily rejected.

9 109. On or about September 28, 2017, Plaintiff's First Amendment rights were
10 violated by Defendant Murphy and Defendant M. Voong, when Plaintiff's administrative
11 appeal was arbitrarily rejected.
12

13 110. Defendants, at all times mentioned herein, took the action/inactions with the
14 malicious intention to cause a deprivation of Plaintiff's constitutional rights involving free
15 speech and the protected activity of filing inmate administrative appeals.

16 111. Defendants, at all times mentioned herein, acted under the state of law while
17 performing discretionary functions, their actions/inactions were taken with the malicious
18 intention to cause a deprivation of constitutional rights or other injury, and their conduct
19 violated "clearly established" statutory or constitutional rights of which a reasonable person
20 would have known.
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**SECOND CAUSE OF ACTION
DUE PROCESS**

**42 U.S.C. §1983 - Fourteenth Amendment; Art. 1, §7, California Constitution
(Against Defendants Jerry Brown, Jennifer Shaffer, Kevin Stripling, Kathleen Allison,
Jeffrey A Beard, Scott Kernan, Ralph Diaz, L. Chauncey, T. Nelson, D. Robinson, D. Don,
C. Azevedo, L. Martinez, S. Hopkins, and Does 1-50)**

112. Plaintiff realleges and incorporates by reference the allegations and facts set forth in the preceding paragraphs as though fully set forth herein.

113. Under the Fourteenth Amendment of the U.S. Constitution, Plaintiff possesses the right of due process of the law, which provides a guarantee that a state is mandated to adhere to its own laws.

114. Defendants, at all times mentioned herein, prevented Plaintiff from enjoying his right to due process protections.

115. Plaintiff, after the passage of Prop. 57, was denied the due process, state-created liberty interest right to receive an EPC hearing before the BPH.

116. Defendants, at all times mentioned herein, knowingly and willing violated Plaintiff's due process, state-created liberty interest rights, by refusing to provide, and by delaying in providing, Plaintiff with an EPC hearing in accordance with the mandates that were promulgated after the passage of Prop. 57.

117. Defendants' actions/inactions, at all times mentioned herein, were not valid or rationally connected to a legitimate and neutral governmental interest.

118. Defendants, at all times mentioned herein, did not offer an alternative means for the protection of Plaintiff's due process, state-created liberty interest right to an EPC hearing in accordance with the mandates that were promulgated after the passage of Prop. 57.

1 119. Had Defendants provided Plaintiff with his due process, state-created liberty
2 interest right to an EPC hearing shortly after the passage of Prop. 57, there would not have
3 been a substantial impact on prison staff, on other inmates' liberty, and on the allocation of
4 limited prison resources.

5 120. Defendants' actions/inactions—in neglecting to provide Plaintiff with his due
6 process, state-created liberty interest right to an EPC hearing shortly after the passage of
7 Prop. 57—were an "exaggerated response" to prison concerns and provided no ready
8 alternative that fully accommodated Plaintiff's rights at de minimis.

9 121. Defendants' actions/inactions—in neglecting to provide Plaintiff with his due
10 process, state-created liberty interest right to an EPC hearing shortly after the passage of
11 Prop. 57—led to an "atypical and significant hardship on Plaintiff in relation to the ordinary
12 incidents of prison life."

13 122. Defendants, at all times mentioned herein, acted under the state of law while
14 performing discretionary functions, their actions/inactions were taken with the malicious
15 intention to cause a deprivation of constitutional rights or other injury, and their conduct
16 violated "clearly established" statutory or constitutional rights of which a reasonable person
17 would have known.

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21 **THIRD CAUSE OF ACTION**
22 **EQUAL PROTECTION**

23 **42 U.S.C. §1983 - Fourteenth Amendment; Art. 1, §7, California Constitution**
24 *(Against Defendants Jerry Brown, Jennifer Shaffer, Kevin Stripling, Kathleen Allison,*
25 *Jeffrey A Beard, Scott Kernan, Ralph Diaz, L. Chauncey, T. Nelson, D. Robinson, D. Don,*
26 *C. Azevedo, L. Martinez, S. Hopkins, and Does 1-50)*

27 123. Plaintiff realleges and incorporates by reference the allegations and facts set
28 forth in the preceding paragraphs as though fully set forth herein.

1 124. Under the Fourteenth Amendment of the U.S. Constitution, Plaintiff possesses
2 the right of equal protection under the law, which guarantees Plaintiff equal treatment to
3 “similarly situated” persons.

4 125. Under Art. 1, §7, California Constitution, Plaintiff possesses the right of equal
5 protection under the law, which guarantees Plaintiff equal treatment to “similarly situated”
6 persons.

7 126. Defendants, at all times mentioned herein, did not treat Plaintiff equal to
8 persons who were similarly situated. In particular, Defendants did not immediately provide
9 Plaintiff with an EPC hearing in accordance with the mandates that were promulgated after
10 the passage of Prop. 57. Those “similarly situated” persons were classified as “NVSS”
11 prisoners, whose both current and prior convictions were identical or similar to Plaintiff’s
12 convictions, whose both current and prior convictions were identical or similar to Plaintiff’s
13 convictions.

14 127. Defendants, at all times mentioned herein, knowingly and willing violated
15 Plaintiff’s equal protection rights, by refusing to provide, and by delaying in providing,
16 Plaintiff with an EPC hearing in accordance with the mandates that were promulgated after
17 the passage of Prop. 57.

18 128. Defendants’ actions/inactions, at all times mentioned herein, were not valid or
19 rationally connected to a legitimate and neutral governmental interest.

20 129. Defendants, at all times mentioned herein, did not offer an alternative means
21 for the protection of Plaintiff’s equal protection right to an EPC hearing in accordance with
22 the mandates that were promulgated after the passage of Prop. 57.

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1 130. Had Defendants provided Plaintiff with his equal protection right to an EPC
2 hearing shortly after the passage of Prop. 57, there would not have been a substantial impact
3 on prison staff, on inmates' liberty, and on the allocation of limited prison resources.

4 131. Defendants' actions/inactions—in neglecting to provide Plaintiff with his
5 equal protection right to an EPC hearing shortly after the passage of Prop. 57—were an
6 "exaggerated response" to prison concerns and provided no ready alternative that fully
7 accommodated Plaintiff's rights at de minimis.

8 132. Defendants' actions/inactions—in neglecting to provide Plaintiff with his
9 equal protection right to an EPC hearing shortly after the passage of Prop. 57—led to an
10 atypical and significant hardship on Plaintiff in relation to the ordinary incidents of prison
11 life.

12 133. Defendants, at all times mentioned herein, acted under the state of law while
13 performing discretionary functions, their actions/inactions were taken with the malicious
14 intention to cause a deprivation of constitutional rights or other injury, and their conduct
15 violated "clearly established" statutory or constitutional rights of which a reasonable person
16 would have known.

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20 **FOURTH CAUSE OF ACTION**
21 **CRUEL AND UNUSUAL PUNISHMENT**

22 **42 U.S.C. §1983 - Eighth Amendment; Art. 1, §17, California Constitution**
23 **(Against Defendants Jerry Brown, Jennifer Shaffer, Kevin Stripling, Kathleen Allison,**
24 **Jeffrey A Beard, Scott Kernan, Ralph Diaz, L. Chauncey, T. Nelson, D. Robinson, D. Don,**
25 **C. Azevedo, L. Martinez, S. Hopkins, and Does 1-50)**

26 134. Plaintiff realleges and incorporates by reference the allegations and facts set
27 forth in the preceding paragraphs as though fully set forth herein.
28

1 135. Under the Eighth Amendment of the U.S. Constitution, Plaintiff possesses the
2 right to be free from cruel and unusual punishment.

3 136. Under Art. 1, §17, of the California Constitution, Plaintiff possesses the right
4 to be free from cruel and unusual punishment.

5 137. Defendants, at all times mentioned herein, imposed cruel and unusual
6 punishment upon Plaintiff by refused to provide Plaintiff with an EPC hearing in accordance
7 with the mandates that were promulgated immediately after the passage of Prop. 57.

8 138. Defendants, at all times mentioned herein, physically restrained Plaintiff of his
9 freedom/liberty, by refused to provide Plaintiff with an EPC hearing in accordance with the
10 mandates that were promulgated immediately after the passage of Prop. 57, which
11 constitutes the imposition of cruel and unusual punishment.

12 139. Defendants, at all times mentioned herein, knowingly and willing violated
13 Plaintiff's right to be free from cruel and unusual punishment, by refused to provide Plaintiff
14 with an EPC hearing in accordance with the mandates that were promulgated after the
15 passage of Prop. 57

16 140. Defendants' actions/inactions, in violating Plaintiff's right to be free from
17 cruel and unusual punishment, were not valid or rationally connected to a legitimate and
18 neutral governmental interest

19 141. Defendants, at all times mentioned herein, did not offer an alternative means
20 for the protection of Plaintiff's right to be free from cruel and unusual punishment and
21 simply denied Plaintiff the right to an EPC hearing in violation of the mandates that were
22 promulgated after the passage of Prop. 57.

1 142. Had Defendants honored Plaintiff's right to be free from cruel and unusual
2 punishment and simply provided Plaintiff with an EPC hearing shortly after the passage of
3 Prop. 57, there would not have been a substantial impact on prison staff, on other inmates'
4 liberty, and on the allocation of limited prison resources.

5
6 143. Defendants' actions/inactions—in neglecting to honor Plaintiff's right to be
7 free from cruel and unusual punishment, and refusing to provide Plaintiff with his right to an
8 EPC hearing shortly after the passage of Prop. 57—were an "exaggerated response" to
9 prison concerns and provided no ready alternative that fully accommodated Plaintiff's rights
10 at de minimis.

11
12 144. Defendants' actions/inactions—in neglecting to honor Plaintiff's right to be
13 free from cruel and unusual punishment, and refusing to provide Plaintiff with his right to an
14 EPC hearing shortly after the passage of Prop. 57—led to an atypical and significant
15 hardship on Plaintiff in relation to the ordinary incidents of prison life.

16 145. Defendants, at all times mentioned herein, acted under the state of law while
17 performing discretionary functions, their actions/inactions were taken with the malicious
18 intention to cause a deprivation of constitutional rights or other injury, and their conduct
19 violated "clearly established" statutory or constitutional rights of which a reasonable person
20 would have known.

21
22 146. Defendants—in neglecting to honor Plaintiff's right to be free from cruel and
23 unusual punishment, and refusing to provide Plaintiff with his right to an EPC hearing
24 shortly after the passage of Prop. 57—did not act in a good faith effort, but, instead, their
25 actions/inactions were intended to maliciously and sadistically cause harm.
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1 147. Defendants—in neglecting to honor Plaintiff's right to be free from cruel and
2 unusual punishment, and refusing to provide Plaintiff with his right to an EPC hearing
3 shortly after the passage of Prop. 57—acted with a sufficiently culpable state of mind.

4
5 148. Defendants' actions/inactions—in neglecting to honor Plaintiff's right to be
6 free from cruel and unusual punishment, and refusing to provide Plaintiff with his right to an
7 EPC hearing shortly after the passage of Prop. 57—were not for a legitimate penological
8 purpose, but were malicious and sadistic for the very purpose of causing harm, and the harm
9 caused was more than "de minimis" because Plaintiff was physically restrained from
10 enjoying his freedom/liberty for more than 4 years.

11
12 **DECLARATORY AND INJUNCTIVE RELIEF**
13 **RIGHT TO BEAR ARMS**
14 **42 U.S.C. §1983 - Second Amendment Violation**
(18 U.S.C. §922(g); California Penal Code 29800 and 29805)

15 149. Plaintiff realleges and incorporates by reference the allegations and facts set
16 forth in the preceding paragraphs as though fully set forth herein.

17 150. The Supreme Court has held that "the Second Amendment protects the right to
18 keep and bear arms for the purpose of self-defense." (*McDonald v. City of Chicago* (2010)
19 130 S. Ct. 3020, 3021.)

20
21 151. Plaintiff's right to bear arms is being infringed under both federal and state
22 law. (18 U.S.C. §922(g); and California Penal Code 29800 and 29805.)

23 152. Plaintiff has never committed a violent or gun related offense, nor has Plaintiff
24 ever been convicted of a violent or gun related offense.

25 153. Therefore, both 18 U.S.C. § 922(g), and California Penal Code §§ 29800 and
26 29805 violate Plaintiff's constitutional right to bear arms, where the prohibitive federal and
27

1 state statutes place unreasonable restrictions on Plaintiff's Second Amendment right, and the
2 Second Amendment right "shall not be infringed" under the United States Constitution.
3
4

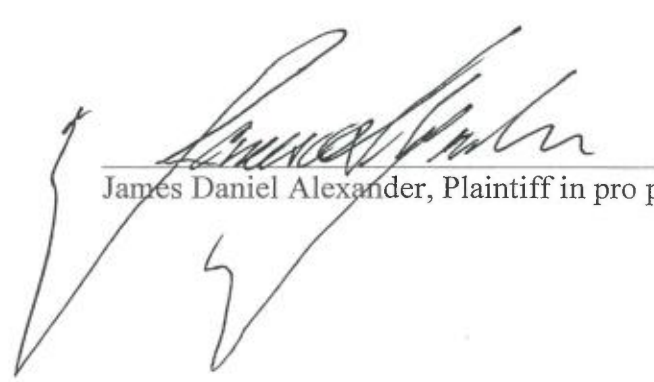
5 **PRAYER**

6 ***WHEREFORE, Plaintiff prays for judgment against each Defendants, jointly and***
7 ***severally, as follows:***

- 8 1. For compensatory damages in an amount to be determined according to proof;
9 2. For punitive, special, and exemplary damage in an amount not less than 2 million
10 (\$2,000,00.00 USD) dollars;
11 3. For declaratory and injunctive relief, through the restoration of Plaintiff's right
12 to bear arms under the Second Amendment of the United States Constitution;
13 4. For costs of suit and attorney's fees as provided by law; and
14 5. For such other relief as the Court deems just and proper.
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19 Dated: February 15, 2023

Respectfully submitted,

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23 James Daniel Alexander, Plaintiff in pro per
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